

EXHIBIT A

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**To: Darlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th street, SW
Washington, DC 20554**

**AFFIDAVIT OF CANDACE NEFF, DIRECTOR OF
COMMUNICATIONS. DIOCESE OF GAYLORD**

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CANDACENEFF, being first duly sworn, deposes and says as follows:

The Roman Catholic Diocese of Gaylord is comprised of the 21 most northern counties of Michigan's lower peninsula which is substantially a rural area. (See attached Exhibit 1.) Our primary industries are agriculture and tourism. Michigan, in general, has been facing significant economic hardship with many businesses leaving the state or closing their doors entirely. Many of the people living in our diocese are retirees who have moved here from more urban areas to enjoy the region's natural beauty and less populated communities. In the Winter, snow and icy conditions can make travel in northern lower Michigan quite difficult and particularly hazardous for our elderly.

In an effort to minister to those who are ill, homebound or otherwise separated from the church, in July of 2005 the Diocese of Gaylord began providing videotape of the weekly Eucharistic Liturgy (Mass) from St. Mary Cathedral in Gaylord, Michigan to WFQX (Fox 33) for broadcast on Sunday mornings.

There are a total of four television stations within the entire 21-county area of the Diocese of Gaylord, the nearest station being 65 miles away from Gaylord. All four stations were considered and evaluated prior to our contracting with WFQX. One station only covers three of our 21 counties on the east side of the diocese; one station did not have an appropriate timeslot available due to prior commitments and declined further negotiations; the last station was eliminated because we could neither meet their time nor monetary requirements for them to be able to air the Mass,

WFQX is a small Fox network affiliate station located in Cadillac, Michigan, which is approximately 95 miles away. WFQX broadcast territory substantially corresponds to the local territory of the Diocese of Gaylord. (See attached Exhibit 2) The taped liturgy is not distributed to any other broadcast outlet. The Diocese pays for air time to broadcast the Mass on WFQX. We do not receive any remuneration from the station for carrying the Mass.

St. Mary Cathedral in Gaylord is the mother church of the diocese and the Most Rev. Patrick R. Cooney, Bishop of the Diocese of Gaylord, decreed the Mass would be televised from St. Mary Cathedral and in compliance with the "Guidelines for Televising the Liturgy." (See attached Exhibit 3.) In part, the guidelines state:

- The bishop of a diocese in which a televised Mass is produced has the responsibility to see that liturgical law is carefully observed, especially regarding the liturgical feasts and seasons.
- Whenever possible, the liturgy should be telecast live. When this is not possible, consideration may be given to pre-recording the liturgy. A liturgy that is pre-recorded for delayed telecast should be taped as it is celebrated in a local worshipping community and then be telecast at a later time on the same day... In order to reflect the integrity of the liturgical year, a pre-recorded liturgy should be taped on a date as close as possible to the dates of the actual telecast.
- Since the liturgy is the work of Christ and the work of God's people, the televised Mass should always be celebrated within a living community of God's people whose presence reveals the full, conscious and active participation of the faithful.

Because of the distance between Gaylord and the nearest broadcast station, as well as the overall rural nature of the area, it is impossible to broadcast the weekly Eucharistic Liturgy live. However, the liturgical guidelines of the Roman Catholic Church provide that participation in the Saturday Vigil Eucharistic Liturgy does fulfill the same obligations and typically carries the same readings as the Sunday morning liturgy.

In keeping with the liturgical guidelines of the Roman Catholic Church, Bishop Cooney (who also holds an additional Masters Degree in Liturgical Research) has approved the taping of

the Saturday evening Mass for broadcast on Sunday morning of the same weekend. Great care is taken to maintain the integrity of the liturgy.

Each week the regularly scheduled Saturday evening liturgy at St. Mary Cathedral (held at 5:00 p.m.) is videotaped by me and/or my assistant utilizing parish volunteers as it is being celebrated live by the priest and congregation. None of the individuals involved in videotaping or producing the liturgy have extensive training in camera operation, editing, etc., but learn "on the job." There are no professional engineers involved in the production process. The Mass is videotaped and edited using equipment installed in what was previously a storage room of St. Mary Cathedral and is produced entirely on site. Our annual total budget for production and television broadcast of the Mass is \$50,000. This includes airtime, courier expenses, equipment maintenance, supplies, etc.

The Mass typically ends around 6:10 p.m. The program is then minimally edited to conform to the one hour time period allotted for broadcast. The edited program is then copied (in real time) to a tape which is presented to a courier for transport to the station. This transfer must take place no later than 9:00 p.m. on the same Saturday evening. The tape must be delivered to the station in Cadillac no later than midnight so that it can be broadcast on Sunday morning (currently at 8:00 a.m.) of the same weekend in order to correspond with the liturgical guidelines of the Roman Catholic Church.

Arvilla Rank, Secretary of the International Catholic Deaf Association – United States, in her comment opposing our petition, makes the generalized and unsupported statement that "Most of the Masses are taped weeks in advance.. ." This statement is completely untrue with regard to the Diocese of Gaylord. Our Mass is taped live and fully post-produced within less than three hours of its conclusion. It is broadcast approximately eight hours after receipt at the station in order to maintain close adherence to the guidelines as set forth by the Roman Catholic Church.

Further Ms. Rank states, "Many priests prepare a typed copy of their homily..." This statement as well is not true in our situation. Fr. John McCracken, Rector of St. Mary Cathedral and presider over the Mass, does not preach from a prepared text. He delivers his homilies extemporaneously. He does not use a script or a written outline. (See attached Exhibit 4.)

Ms. Rank also states that "a large part of the Mass is repeated each time." While there are a few instances where the congregation joins in common prayer or response which may be repetitive, the readings, prayers, responses, intercessions, songs, homily and homily are actually keyed to the specific week. In fact, each week is designated with particular readings and a focus for the liturgy which is why there is no repeat value to the programming. In addition, sacraments such as baptism during the Mass, anniversaries, liturgical seasons, Feast days and special events all can change the format of the Mass or placement of liturgical elements. Because of these changes and the technological limitations, it is not possible to "pre-caption" in any way to include the few elements which may repeat for future tapings.

Contrary to Ms. Rank's assertion, sending a tape out to a captioning company and getting it back in time for broadcast is simply not possible in our situation.

In an effort to further address the needs of the deaf and hard of hearing, we have sought assistance from several closed captioning companies as well as equipment manufacturers. Most of the closed captioning companies we talked with required tapes to be sent to them in advance with a turnaround time of a few days at a minimum. The nearest closed captioning company is approximately 200 miles away.

While we understand the propensity to believe all communities and regions are relatively similar, it is important to understand there are vast differences between rural and urban *mas*. The same facilities, businesses, and technology are not available in rural communities as in the metropolitan regions. As a small diocese with few options for broadcast, it was a significant challenge for us to be successful in getting *the Mass* on the air. It wasn't until WFQX was able to assist us in finding a courier that we were able to move forward.

We have explored the potential to have the captioned live. We have been informed that in order for the Mass to be captioned live during broadcast (thus after production), this would have to be accomplished at the station. WFQX is a very small affiliate station without the necessary equipment or personnel to provide this service to us.

We also explored options for "on site" captioning during the production process. As we understand it, because the Mass is taped live and there is no script, one option would be to transcribe the Mass after the editing was completed. Then, using specialty software, the transcribed text could be loaded to a tape and then yet another master created (in real time) which would include all three elements of video, audio and captions. We have been informed this solution would at a minimum require an encoder (\$3,090), captioning software (\$1,995), a computer (\$3,699), and a master deck (\$5,999). (See attached Exhibit 5.)

Of course there would also be installation costs which would be additional which have not been estimated. Further, because of the technical aspect of this work, we do not feel we could utilize volunteers. Hence, we would also have to add staff to transcribe the Mass and then to incorporate the text onto *the* video at an estimated minimum cost of \$12,000 annually, assuming people with the appropriate skills could be found in our area. This additional total costs of \$26,783 would increase the current cost of the Mass (\$50,000) by more than 50% bringing the total cost to approximately \$76,783.

However, even if the diocese could find appropriate personnel and some way to fund the additional cast, the time involved to transcribe after editing and then incorporate the captions and dub back to the tape would exceed the available timeframe in order to get *the* tape to the station in time for broadcast.

A second option is to use voice recognition software. As we understand, in this scenario we would need to purchase special voice recognition software, related peripherals, encoder and a computer which is sold as a package (\$12,875) and master deck (\$5,999). (See attached Exhibit 6.) In addition, we would need to install a local area network in the cathedral so that the voice captioner could be remotely located to a sound proofed or substantially quiet area to better assure accuracy. Additional staff (\$12,000) would also be required in this option to initially program the software and then repeat back what is said and then correct any inaccuracies.

Consistency in the voice captioner is key to this being successful. However, again, the time constraints for transport of the completed program prevents this from being a viable solution. The costs associated with this alternative (an additional \$30,874) would increase the overall cost of the Mass (currently \$50,000) to at least \$80,874 or an additional 60%. Thus, in addition to the time constraints, the additional costs would be prohibitive to continuing the broadcast.

Because of the rural nature of our area and the fact that the program is produced on a Saturday evening, in neither option above would we have access to technical assistance should a problem arise in the captioning process.

Having exhausted the currently available closed captioning options, we then considered the possibility for a sign language interpreter. However, again due to the rural nature of our area, we have been unable to locate personnel who could provide this service. There are no universities located within the boundaries of our diocese, though some do offer classes as off-campus opportunities primarily in business, vocational education, and health related fields. We do have a few community colleges, but the nearest one is 40 miles away.

We agree with Ms. Rank that faith-based and religious television programs offer and reach out to people who seek spiritual guidance. She clearly demonstrates her agreement with us that we are providing a much needed ministry to those in our area as she states that the "Catholic Mass on television is intended to enable people to observe and participate in it – especially if they are ill or elderly." We have heard from many infirmed and other individuals -- Catholic and non-Catholic alike -- who suffer with a myriad of personal circumstances which keep them from attending a church that our televised Mass lifts their spirit, enriches their faith, and provides them hope in a sometimes very lonely existence. (See attached Exhibit 7.)

The Pastoral Statement of the US Catholic Bishops on People with Disabilities from 1978 referred to by Ms. Rank challenged us to work "for a deeper understanding of both the pain and potential of our neighbors who are blind, deaf, mentally retarded, emotionally impaired, who have special learning problems, or who suffer from single or multiple physical handicaps – all those whom disability may set apart." It reflects concern for all people who need special assistance, not solely those who are deaf or hard of hearing.

Some thirty years have passed since that document was introduced and many strides have been made to include in the life of the Church to minister to those with differing abilities. More and more parishes are barrier-free, lighting is improved and structures have been redesigned. St. Mary Cathedral, as well as many of the churches in our diocese, does provide personal listening devices specifically to assist the hard of hearing. Written materials are also available to help them follow the Mass and allow for participation.

Many of the deaf and hard of hearing are physically able to attend a Mass, but Ms. Rank notes only a small number of the population she serves choose to do so. Clearly all religious denominations have more work to do to make the deaf and hard of hearing feel welcome in their churches.

At the same time, many of the people who currently watch our Mass on television are not making a personal choice not to attend church. They cannot physically leave their homes to do so or they may be hospitalized or in nursing homes. The televised Mass is their link to the weekly celebration of the liturgy.

None of the commenters to our petition reside in the territory of the Diocese of Gaylord and because it is only broadcast locally, it is not available in their respective areas. It appears they are presenting their comments in support of the principle of closed captioning and do so without addressing the unique circumstances and limitations facing the Diocese of Gaylord as presented in our petition. Moreover, we would like to believe that the intent of these individuals and organizations, who appropriately wish to advocate for the rights of those who are deaf and hard of hearing in society, would not at the same time wish to limit or deny the rights of others with other disabilities.

Further, we do not believe that it is within the spirit of compassion, justice or the law to enhance the rights of one group of people with disabilities by rescinding the rights of another group. If the Diocese of Gaylord is not granted an exemption to the closed captioning rules, we will be forced to cease televising the Mass. In that event, not only do the deaf and hard of hearing not gain improved access, but a much larger segment of our population who currently depend on the broadcast lose their access to the Mass as well.

Commenters Tonya Lenz, Arvilla Rank, Veronica Balcarcel and Carie Sarver all call for the FCC to support the deaf and hard of hearing by enforcing the closed captioning rules. Granting an exemption for the Diocese of Gaylord would, in fact, be in keeping with the closed captioning rules. The rules referred to do provide for exemptions in situations where closed captioning poses an undue burden which is defined as "significant difficulty or expense." We believe we have clearly demonstrated that to provide closed captioning does pose an undue burden for the Diocese of Gaylord. We are a small diocese in a rural area working with a very small television station. We produce one program, once a week, for a local audience. We believe ours is exactly the type of situation for which the allowance of an exemption was intended.

While we recognize the importance of closed captioning, given the totality of our circumstances, we are simply unable to do so at this time. We do intend to keep abreast of developments in technology in the hope that we will be able to provide closed captioning at some point in the future so that we may be even more inclusive to those suffering from deafness or hearing loss. We are committed to doing what we can to bring the Good News to all, regardless of their personal challenges. However, if our petition for an exemption is denied, we will be forced to discontinue broadcasting the Mass.

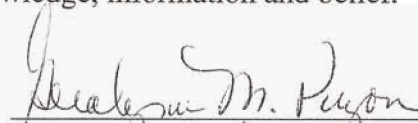
We therefore respectfully request the Federal Communications Commission uphold their previous decision and continue to grant the Diocese of Gaylord an exemption from the closed captioning rules.

Further, deponent sayeth not.


Candace Neff

STATE OF MICHIGAN)
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COUNTY OF OTSEGO)

On this 7th day of May, 2007, before me a notary public, in and for said county, personally appeared CANDACE NEFF, known to me to be the person described in and who acknowledged that she has read the foregoing Affidavit, by her subscribed, and acknowledged that the same was true to the best of her knowledge, information and belief.


GERALDINE M. PUZOW, Notary Public
Acting in Otsego County, Michigan
My Commission Expires: 3-11-13